



PLANNING, RESEARCH AND DEVELOPMENT DEPARTMENT

MEMORANDUM

DATE: May 19, 2004

TO: The Honorable Mayor and City Council
Jim Martinez, Chief Administrative Officer
Patricia D. Adauto, Deputy Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Ocegueda, Executive Assistant to the Mayor

FROM: Kimberly Forsyth, Urban Planner *KLF*

SUBJECT: **ZON04-00028:** Lots 18 - 22, Block 3, and a portion of Kappa Road, Keystone Business Park
LOCATION: Adjacent to I-10 at the end of Kappa Road (District 8)
REQUEST: **Release zoning condition #5 of a contract dated Feb. 17, 1987:**

Stamp: CITY CLERK, EL PASO, TEXAS, MAY 19 2004

The City Plan Commission (CPC), on May 6, 2004, voted 4-3 to recommend DENIAL of the subject request, dissenting from Staff's recommendation. The applicant is requesting that a contract condition prohibiting residential uses be released to permit an apartment complex on the site. The site is currently vacant and is 16.09 acres in size. The proposed concept plan shows an apartment complex with 320 units (density of 20 units per acre) and an office/clubhouse to be located on the site.

The CPC determined that the **release** of the zoning condition on the subject property did not protect the best interest, health, safety and welfare of the public in general. The CPC also determined that the proposed apartments were not compatible with adjacent development and that the proposed use was not in accordance with and in furtherance of *The Plan for El Paso*.

There was **OPPOSITION** to this request.

Attachment: Staff Report

APPEAL TO THE CITY COUNCILDATE May 11, 2004HONORABLE MAYOR AND CITY COUNCIL
CITY OF EL PASO, TEXAS

DEAR MAYOR AND COUNCIL:

After a public hearing held on May 6, 2004, the
City Plan Commission denied my request for release of
Condition #5 of Contract dated February 17, 1987, which
prohibits residential use of the property.

legally described as:

Lots 18-22, Block 3, and a portion of Kappa Road,
Keystone Business Park as filed in Vol. 76, Pg. 83,
Plat Records, El Paso County, Texas, described by
metes and bounds on attachment

I hereby request the City Council to review the decision of the _____
City Plan Commission AND CONSIDER MY REQUEST

SET OUT ABOVE. I AM ATTACHING A LETTER SETTING FORTH MY
REASONS FOR BELIEVING THEIR DECISION TO BE IN ERROR.

KEYSTONE DAM, LTD.

By _____
APPLICANT6006 N. Mesa, Suite 110
ADDRESS El Paso, TX 79912(915) 585-9999
TELEPHONE NUMBERTwo (2) copies filed in City Clerk's Office on:CITY CLERK DEPARTMENT
MAY 12 PM 2 50

KEYSTONE DAM, LTD.
6006 N. MESA, SUITE 105
EL PASO, TEXAS 79912

May 12, 2004

Honorable Mayor and City Council
City of El Paso
2 Civic Center Playa
El Paso, Texas

HAND-DELIVER

Re: Appeal of City Plan Commission decision
declining release of contract condition

Gentlemen/Ladies:

The reasons that Keystone Dam, Ltd. (Applicant) believes the decision of the city Plan Commission (CPC) (declining release of a contract condition prohibiting residential use of C-4 property) to be in error are as follows:

1. The CPC decision is contrary to the unanimous decision and recommendation of the City Development Coordinating Committee, and of the recommendation of the City's professional staff, in favor of releasing the contract condition.
2. The CPC decision is contrary to the City's master Plan for this area which calls for residential use of the subject property (notwithstanding its current zoning).
3. The CPC decision is tantamount to a finding that it would be preferable to have commercial fueling station, a half-way house, theater, a heavy vehicle and equipment repair facility, a manufacturing plant, a motor carrier terminal or a warehouse (all of which are permitted C-4 uses) adjacent to an established residential area, instead of a apartment complex the impact of which would be far more benign than any of the other listed uses.
4. The CPC decision is contrary to the request of the Junior League of El Paso, the Keystone Heritage Foundation, and the Rotary Club of El Paso (who are funding and supervising development of the wetlands and a botanical garden for the City of El Paso) that the

residential restriction be removed to permit construction of apartments.

5. The CPC decision disregards the fact that, but for the Applicant's outright donation of the 4 acre archaeological site, and of 15 acres of the wetlands area, these areas would not be available to the public, as they now will be.
6. The CPC decision is based on factually incorrect and inflammatory statements made by pseudo-environmentalists regarding the alleged effect of any development of surrounding areas and seeking a purchase of all available land by the City of El Paso.
7. The CPC decision will have the effect of contributing to El Paso's urban sprawl by sending another development to the city's outer edges instead of focusing on rejuvenation and development of its core.

We would welcome the opportunity to answer any questions which you may have about these points and again request that you reverse the decision of the City Plan Commission. Thank you for your attention to this matter.

Chris A. Cummings, President

KEYSTONE DAM, LTD

By: CIC, Limited, its General Partner

By ~~Orion Noya Corporation~~

~~its General Partner~~

By: _____

Chris A. Cummings, President

STAFF REPORT

Zoning Condition

Amendment/Release: ZON04-00028

Property Owner/Applicant(s): Keystone Dam, Ltd.

Representative: Paul Sergeant, Jr. / Sergeant Law Firm, P.C.

Legal Description: Lots 18 - 22, Block 3, and a portion of Kappa Road, Keystone Business Park

Location: Adjacent to I-10 at end of Kappa Road

Representative District: # 8

Area: 16.09 Acres

Present Zoning: C-4/sc (Commercial/special contract)

Present Use: vacant

Proposed Request: Release Condition #5 of contract dated Feb. 17, 1987 prohibiting residential uses.

Proposed Use: Apartments

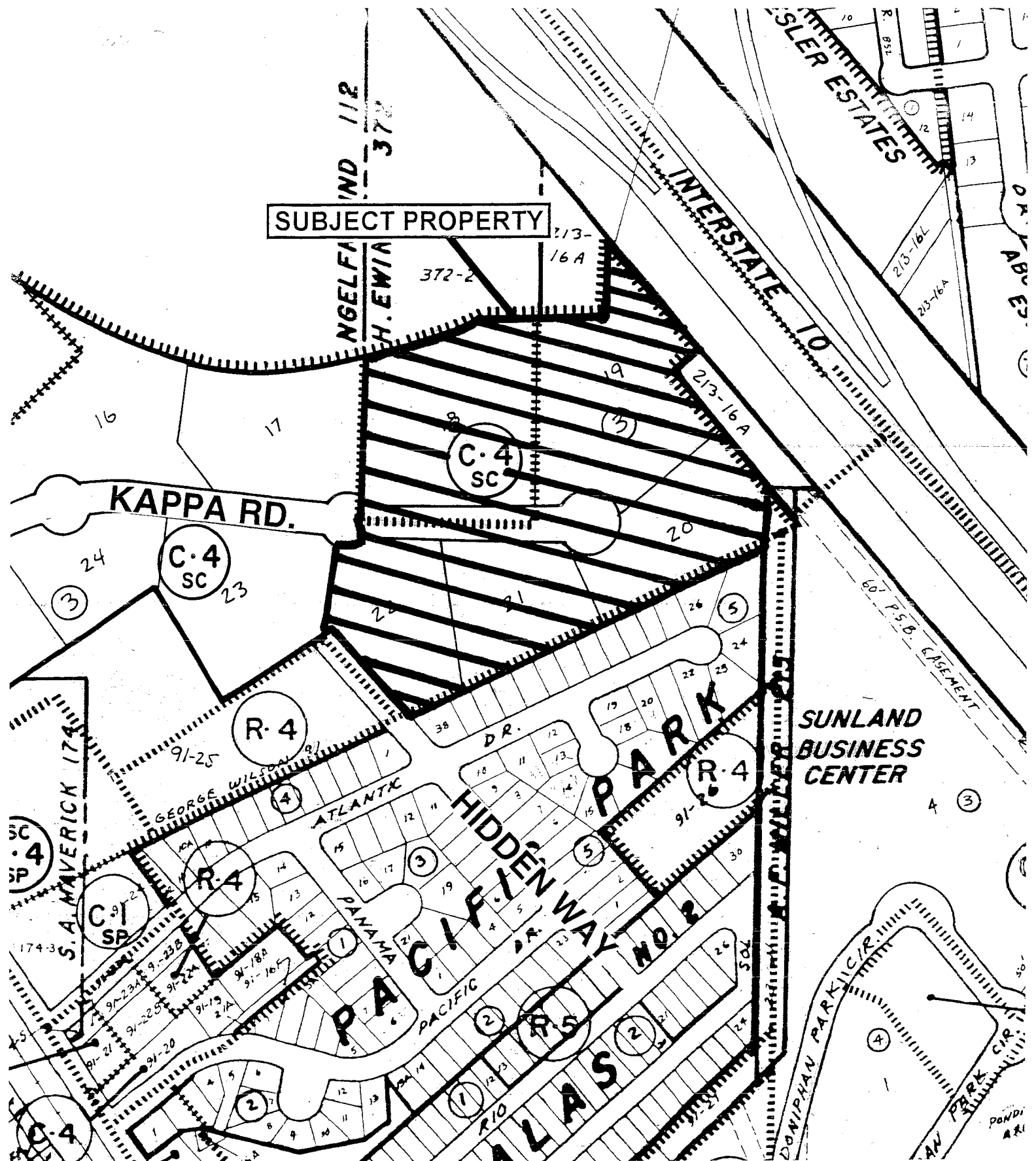
Surrounding Land Uses:


North -	R-4 (Residential) / Keystone Dam & I-10
South -	R-5 (Residential) / single family residential
East -	I-10
West-	C-4/sc (Commercial/special contract) & R-4 (Residential) / vacant & church

Year 2025 Designation: Residential (Northwest Planning Area)

**CITY PLAN COMMISSION HEARING, May 6, 2004,
1:30 P.M., CITY COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL**

ITEM #20



	SCALE	GENERAL LOCATION	CASE NUMBER
NORTH	1" = 300'	MAP	ZON04-00028

Zoning Condition

Amendment/Release: ZON04-00028

General Information:

Ordinance No. 8929, dated Feb. 17, 1987, rezoned the property as C-4/sc (Commercial/special contract). Eight conditions were imposed by a contract dated Feb. 17, 1987 (attached). The applicant is requesting that Condition #5 which prohibited residential uses be released to permit an apartment complex on the site.

The site is currently vacant and is 16.09 acres in size. The proposed concept plan shows an apartment complex with 320 units (density of 20 units per acre) and an office/clubhouse to be located on the site. Access is proposed via Kappa Rd.; parking spaces are provided including ADA-compliant.

Information to the Commission:

The Planning Dept. has received three letters in opposition of this request.

Staff Recommendation:

The Development Coordinating Committee (DCC) unanimously recommends APPROVAL of this request for contract condition **release**. Its recommendation is based on the following:

The C-4 (Commercial) zoning district permits apartments, and is compatible with adjacent development.

The proposed use is in accordance with and in furtherance of *The Plan for El Paso*.

The Commission must determine the following:

Will the **release** of zoning condition No. 5 on the subject property protect the best interest, health, safety and welfare of the public in general?

Information To The Applicant:

Building Permits and Inspections Department Notes:

No zoning comments.

Engineering, Development Division Notes:

See Enclosure 1.

Engineering, Traffic Division Notes:

No traffic concerns with proposed release

Fire Department Notes:

Release of the condition does not adversely affect the Fire Dept. Note to applicant: All building construction on this site will require fire sprinkler protection.

El Paso Water Utilities Notes:

See Enclosure 2.

Planning, Research & Development Department Notes:

1. Planning recommends approval of releasing this condition to permit residential development. The Year 2025 Plan for El Paso designates this area for residential uses.
2. C-4 zoning permits a density of 58 multi-family units per acre – this development as proposed is much less dense.
3. The contract condition for site plan review will help to ensure favorable development.

ATTACHMENT: Location Map, Site Plan; Enclosures 1 & 2, Opposition.

NOTE TO THE PROPERTY OWNER: CITY PLAN COMMISSION POLICY REQUIRES THAT THE APPLICANT OR REPRESENTATIVE BE PRESENT AT THE PUBLIC HEARING FOR THIS ITEM. PLEASE DIRECT ANY QUESTIONS CONCERNING THIS REPORT TO THE PLANNING DEPARTMENT AT (915) 541-4024.

Engineering Department
DEVELOPMENT DIVISION
COMMENTS

TO: PLANNING DEPARTMENT

DATE: March 4, 2004

FROM: Engineering Department

ADDRESS: End of Kappa Rd.

ATTN: Kimberly Forsyth or
Fred Lopez, Urban Planners

PROPOSED USE: Apartments

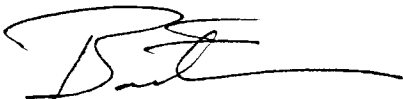
CASE NO.: ZON04-00028

ZONE: C-4/sc

REQUEST: Zoning Condition, Amendment release

LEGAL DESCRIPTION: L 18-22, B 3, and a portion of Kappa Rd., Keystone Business Park

- ☐ 1. No comments
- ☒ 2. Must be submitted as a subdivision
- ☒ 3. Sidewalks will be required,
- ☒ 4. Grading plan and permit required.
- ☐ 5. Storm Water Pollution Prevention details required.
- ☒ 6. Storm Water Pollution Prevention plan and permit required.
- ☒ 7. Drainage plans must be approved by the City Engineer
- ☐ 8. On site ponding will be required.
- ☐ 9. Private pond is required.
- ☒ 10. No water runoff allowed unto Doniphan Dr.
- ☐ 11. Additional R.O.W. required.
- ☒ 12. Additional Comments: Site location is not located within the Special Flood Hazard Area. Zone C, Panel 27 D. Before the Amendment release is approved the drainage for the proposed area needs to be addressed and approved, in particular the flow path for the overflow runoff from the spillway of the Keystone Dam. Also the Street and Drainage Improvements for this Subdivision have not been constructed.



Bashar Abugalyon, P. E.
Interim Assistant City Engineer

DISTRICT: 8

INTEROFFICE MEMORANDUM

To: Kimberly Forsyth
Urban Planner/Land Development

From: El Paso Water Utilities - Engineering

Date: March 22, 2004

Subject: **ZON04- 00028 (Zoning Condition, Amendment Release)**
(Keystone Business Park Phase Two)

Lots 18 – 22, Block 3, and a portion of Kappa Road, Keystone Business Park.
Location: Adjacent to IH-10 at the end of Kappa Road.
Present: C-4/sc (Commercial/special contract); vacant.
Proposed request: release condition #5 of contract dated Feb 17, 1987
prohibiting residential.
Proposed Use: Apartment.

We have reviewed the *zoning condition, amendment release* described above and provide the following comments:

Water

There are no existing water mains along Doniphan Drive fronting the subject Property.

There are no existing water mains along the proposed Kappa Road.

Sanitary Sewer

Along Doniphan Drive there is an existing twenty-four (24) inch diameter sanitary sewer main. No service connections are allowed to this main as per the El Paso Water Utilities – Public Service Board.

General

Proposed water mains have been designed for extension along the proposed Kappa Road.

The proposed sanitary sewer mains to be extended along the proposed Kappa Road are presently under the design stage.

Both the above referenced designs pertaining to the proposed water as well as the proposed sanitary sewer mains will have to be modified in order to accommodate the proposed apartment complex located between Kappa Road and the Interstate Highway No. 10 (IH-10).

Application for water and sanitary sewer services should be made 6-8 weeks prior to any construction to ensure water for construction work. A site plan, a utility plan, grading & drainage plans, landscaping plan (if applicable), the legal description of the property, and a certificate-of-compliance are required at the time of application. The certificate-of-compliance can be obtained on the 2nd floor at City Hall. EPWU does not object to this request.

Concerning: Case No.: ZON04-00028

Name: Gerald and Joy Anderson

4347 Emory / 297 Atlantic

Position: Strongly oppose changing the zoning of this property in the Keystone Business Park area to build an apartment complex.

Reasons: ① Too many residents w/ one way in and out of complex! **
② This kind of population would destroy the historic area next door!
③ This kind of population would destroy the wild life area next door!

* Please do not allow an apartment complex to destroy one of our last inter-city preserves in the upper valley. Thank you very much for your time concerning this property.

Sincerely,

Bob Anderson

Joy Anderson

** Check out the traffic back up on Atlantic on Sunday mornings when the church service lets out and trying to get onto Doniphan. Doniphan is like trying to get onto a freeway but starting at a standstill from a stop sign. The city sure couldn't install another traffic light just 1/2 block away from the one at Frontera.

park

May 5, 2004

Mr. Fred Lopez
Urban Planner
10th Floor, City County Building
El Paso, Texas 79901

RE: APARTMENT COMPLEX, KEYSTONE HERITAGE PARK

I strongly oppose the development of the land adjacent to Keystone Heritage Park with an apartment complex.

The Park is a much needed addition to El Paso's attractions, for both local residents and tourists. It does need to be seen as a complex, large area, which cannot be maintained if it is surrounded by a densely populated set of apartment buildings.

I hope that you will work with the City Planning Commission and the developer to protect the entire Keystone Heritage Park area so that it can become a strong and positive force for El Paso.

Thank you,

Karen A. Syzdek
4816 Caseta Road
El Paso, Texas 79922



Craig R. Guest
4824 Caseta Road
El Paso, TX 79922

May 6, 2004

Mr. Fred Lopez
Urban Planner
No. 2 Civic Center Plaza, 10th Floor
El Paso, TX 79901

Dear Mr. Lopez:

Please OPPOSE the development of an apartment complex adjacent to the Keystone Heritage Park.

El Paso is a beautiful city. However, our planners seem to allow growth at any cost to the city's historical and archaeological treasures.

El Paso is woefully short of parks. Keystone Heritage Park should be developed into an international tourist attraction. This will never happen if the park is surrounded by densely constructed apartments.

Planning for the land adjacent to the park should be in concert with tourism.

For just once, City Council and the Mayor should vote in favor of El Paso's future rather than satisfying a developer profiting behind the politically emotional phrase "El Paso needs more affordable housing."

Sincerely,
Craig R. Guest



Greater El Paso Association of Realtors (MLs)

Patricia L. Palafox
Attorney-Mediator-Arbitrator

SEND ALL CORRESPONDENCE TO:
8001-E North Mesa, PMB 345
El Paso, TX 79932
(915)833-6196 telephone or fax 833-7305
E-MAIL: ppalafox@elp.rr.com

MEDIATIONS/ARBITRATIONS
See mediation confirmation letter

FACSIMILE COVER SHEET

TO: FRED LOPEZ

FAX NUMBER: 541-4028

DATE: 5-6-04

FROM: Patricia L. Palafox

RE: CRIS Cummings Apartments = NO!

NUMBER OF PAGES: 1 INCLUDING COVER SHEET

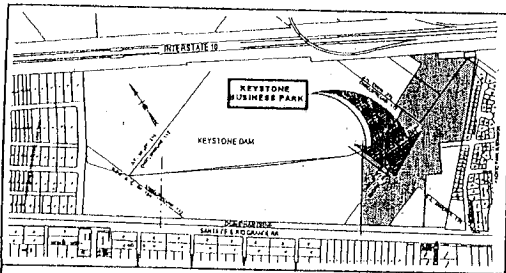
☒ This document is in lieu of any copy to be mailed and should be maintained as your file record.

☐ An original/copy will be mailed/ hand delivered to you for your file.

COMMENTS: I am strongly opposed to
A 300 Apt. Building going up
Next to Keystone. First Mr.
Cummings tried to PAUSE Keystone,
NOW HE WANTS to DESTROY it
Another WAY! Patu 2004

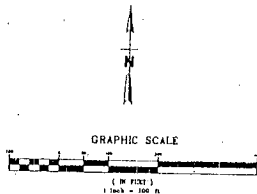
If you did not receive all or part of this transmission, please contact this office immediately.

CONFIDENTIALITY NOTICE: This transmission (and/or documents accompanying it) may contain confidential information belonging to the sender. The information is intended only for the use of the individual or entity named above and may be privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the documents.



Location Map

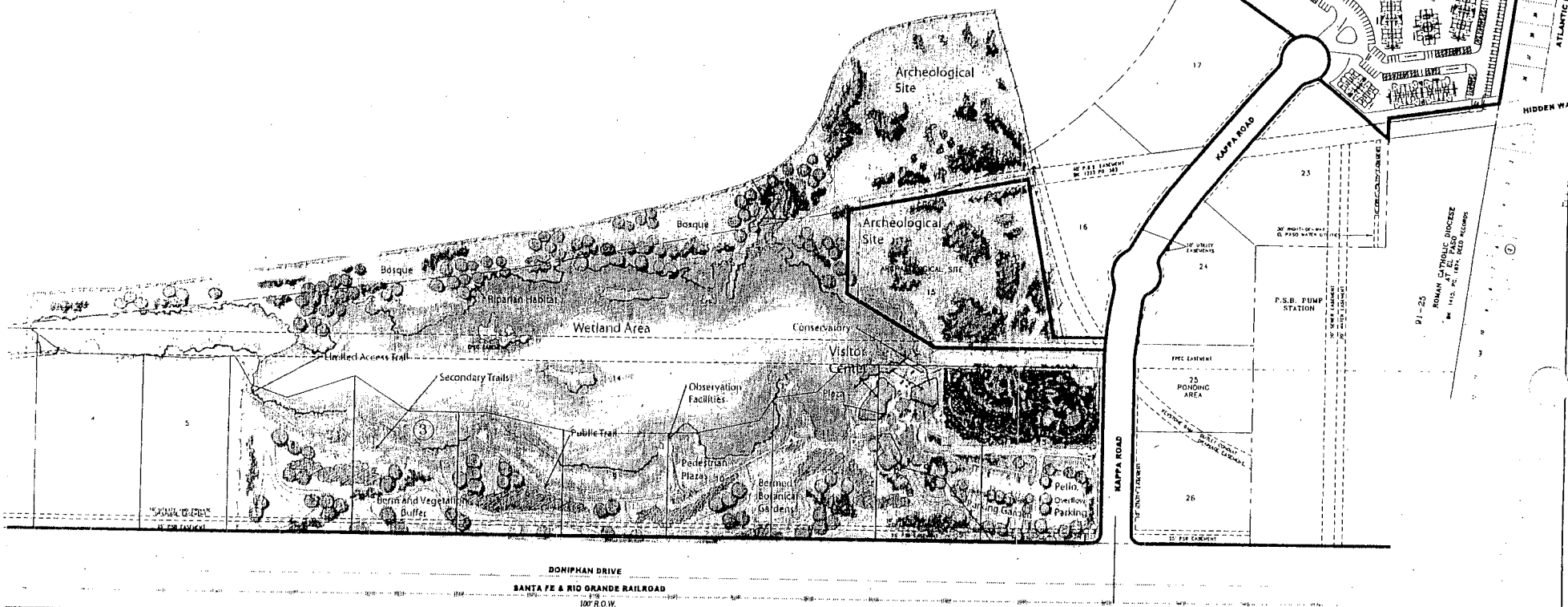
Scale: 1"=600'



KEYSTONE DAM
CITY OF EL PASO
IN LINE TO BEING
DEVELOPED

GENERALIZED PLOT PLAN LOTS 18 THRU 22, BLOCK 3, KEYSTONE BUSINESS PARK

NO UNIT A	TYPE 1	1 BUILDING
NO UNIT A	TYPE 2	1 BUILDING
NO UNIT A	TYPE 3	1 BUILDING
NO UNIT A	TYPE 4	1 BUILDING
NO UNIT A	TYPE 5	1 BUILDING
NO UNIT A	TYPE 6	1 BUILDING
NO UNIT A	TYPE 7	1 BUILDING



BROCK & BUSTILLOS INC.
CIVIL AND LANDSCAPE ARCHITECTS
1111 CINCINNATI CENTER
EL PASO, TEXAS 79901
PHONE (915) 541-1000
FAX (915) 541-1001

411 CINCINNATI CENTER
EL PASO, TEXAS 79901

JOHN W. GARRARD

PHONE (915) 541-1000
FAX (915) 541-1001

82004.00078

39459

H151-1101

THE STATE OF TEXAS)
COUNTY OF EL PASO)

CONTRACT

THIS CONTRACT, made this 17th day of February, 1987, by and between TEXAS COMMERCE BANK - EL PASO, NA, INDEPENDENT EXECUTOR AND TRUSTEE UNDER THE WILL OF MARY WHITE BOYKIN, DECEASED, First Party, and the CITY OF EL PASO, Second Party, witnesseth:

Application has been made to the City of El Paso for rezoning of a portion of A.F. Miller Survey No. 210 and 213; C.A. Engelsfreund Survey No. 112; B.B.B. & C. Railroad Survey No. 154; G.L. Wilson Survey No. 91 and S.A. Maverick Survey No. 174, City and County of El Paso, Texas, which is more particularly described by metes and bounds in the attached Exhibit "A" which is made a part hereof by reference. To remove certain objections to such rezoning, First Party covenants that if the property is rezoned from R-4 (Residential) to C-4 (Commercial) within the meaning of the zoning ordinance of the City of El Paso, it shall be subject to the following restrictions, conditions and covenants:

1. Prior to the issuance of any building permits, a subdivision plat must be approved by the City Plan Commission and filed of record with the County Clerk.
2. No building(s) shall be constructed closer than fifty (50) feet to the southerly property line adjacent to St. Jude's Church and the Pacific Park Subdivision.
3. At the time the rezoning request is approved by the Mayor and City Council, the property owner shall dedicate twenty (20) feet of right-of-way for the widening of Doniphan Drive.
4. An additional twenty (20) foot wide special building setback line shall be established adjacent to the twenty (20) feet of right-of-way being dedicated in Condition No. 3 of this contract.
No building(s) or structures(s) shall be constructed within the special building setback line, except that surplus off-street parking shall be allowed.
5. The property shall not be used for any type of residential purposes.
6. There shall be no vehicular ingress and egress from this property to Hidden Way.
7. Within two (2) years from the date of this contract, either upon written demand by the City of El Paso or upon demand of the property owner, the property owner shall sell to the City a 2.87 acre parcel of land adjacent to the existing Northwest Corral at a price that is mutually agreed upon by both parties.

If the City fails to exercise its option within two (2) years,

1789 0879

the property owner shall be released from this requirement of the contract.

8. No billboards will be allowed on the property.
9. Prior to the issuance of any building permits, the property owner shall submit a site plan to be approved by the City Plan Commission and City Council.

This agreement is a restriction, condition and covenant running with the land and a charge and servitude thereon, and shall bind First Party and its successors in title. Any future conveyance of the land shall contain this restriction, condition and covenant and shall embody this agreement by express reference.

The City may enforce this agreement by injunction or any other legal or equitable remedy. The City Council of the City of El Paso may amend or release the above restrictions, conditions and covenants in its direction without the consent of any third person who may be benefited thereby, and without affecting the validity, or necessitating the amendment of, the ordinance passed by the City Council embodying this change of zoning and subject to this contract.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

FIRST PARTY:
TEXAS COMMERCE BANK - EL PASO

By William C. Legu
Title President

SECOND PARTY:
CITY OF EL PASO

By W. B. [Signature]
Mayor

APPROVED AS TO CONTENT:

[Signature]
Planning Department

THE STATE OF TEXAS)
COUNTY OF EL PASO)

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney

This instrument was acknowledged before me on this 30 day of March, 1987, by William C. Legu, as President, for TEXAS COMMERCE BANK - EL PASO.

My Commission Expires:

March 14, 1989

[Signature]
Notary Public, State of Texas

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign an Amendment to the Contract between TEXAS COMMERCE BANK – EL PASO, NA, INDEPENDENT EXECUTOR AND TRUSTEE UNDER THE WILL OF MARY WHITE BOYKIN, DECEASED, First Party, and the CITY OF EL PASO, Second Party, amending the Contract imposed by Ordinance No. 8929 and dated February 17, 1987; to release Condition No. 5 on the property described as *Lots 18, 19, 20, 21, and 22, Block 3, and a Portion of Kappa Road, Keystone Business Park, El Paso, El Paso County, Texas.*

PASSED AND APPROVED this 8th day of **June, 2004.**

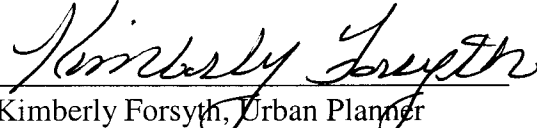
THE CITY OF EL PASO

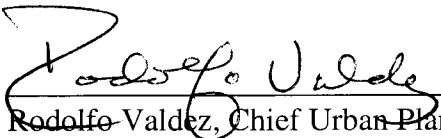
Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:


Kimberly Forsyth, Urban Planner
Planning, Research & Development


Rodolfo Valdez, Chief Urban Planner
Planning, Research & Development

THE STATE OF TEXAS)
) **CONTRACT AMENDMENT**
COUNTY OF EL PASO)

WHEREAS, a contract was entered into by and between TEXAS COMMERCE BANK – EL PASO, NA, INDEPENDENT EXECUTOR AND TRUSTEE UNDER THE WILL OF MARY WHITE BOYKIN, DECEASED, First Party, and the CITY OF EL PASO, Second Party, dated February 17, 1987; on certain property in El Paso County, State of Texas, as described herein, as part of a rezoning request;

WHEREAS, the rezoning was subject to a contract to remove certain objections to such rezoning; and

WHEREAS, application for a Contract Amendment on the property described herein, has been made by Keystone Dam Ltd., the successor in title and interest to the property; and

WHEREAS, a public hearing regarding such Contract Amendment was held before the City Plan Commission, which has recommended denial of releasing Condition No. 5 of the contract; and

WHEREAS, the City Plan Commission recommendation is based on a determination that Condition No. 5 is still applicable and that the proposed release of Condition No. 5 will not protect the best interest, health, safety and welfare of the public in general; and

WHEREAS, the City Council of the City of El Paso has determined that Condition No. 5 of the contract attached to Ordinance No. 8929 should be released,

NOW, THEREFORE, BE IT KNOWN ALL MEN BY THESE PRESENTS:

1. That the contract attached to Ordinance No. 8929 shall be amended to release Condition No. 5 in its entirety for the property described as *Lots 18, 19, 20, 21, and 22, Block 3, and a Portion of Kappa Road, Keystone Business Park, El Paso, El Paso County, Texas.*

2. Except as herein amended, Ordinance No. 8929 shall remain in full force and effect.

ADOPTED this 8th day of June, 2004.

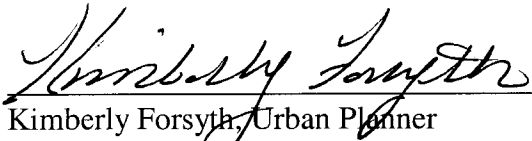
THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO CONTENT:



Kimberly Forsyth, Urban Planner
Planning, Research & Development



Rodolfo Valdez, Chief Urban Planner
Planning, Research & Development

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this _____ day of _____, 2004,
by Joe Wardy as MAYOR of the CITY OF EL PASO.

My Commission Expires:

Notary Public, State of Texas
Notary's Printed or Typed Name:
